

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

**DEFENDANT BBC AF MANAGEMENT/DEVELOPMENT LLC'S MOTION  
FOR LEAVE TO FILE EXHIBITS 1 THROUGH 5 TO ITS MOTION TO  
DISMISS UNDER SEAL**

COMES NOW, Defendant BBC AF Management/Development LLC (“BBC”) files this Motion for Leave to File Exhibits 1 through 5 to its Motion to Dismiss Under Seal. In support thereof, BBC respectfully shows the Court as follows.

On April 26, 2021, Court granted Defendant's Unopposed Motion for Entry of Stipulated Protective Order and entered the Stipulated Protective Order [Doc. No. 14]. Certain Exhibits to BBC's Motion are documents designated as "Highly Confidential – Attorneys' Eyes Only" under paragraph 2.b. of the Stipulated Protective Order, which provides:

“Highly Confidential Information – Attorneys’ Eyes Only” shall mean sensitive, confidential, proprietary, or commercial information of the highest order which cannot be seen by competitors or in any manner released to the public, and includes but is not limited to documents reflecting corporate strategy and budgeting and certain contracts with the Government....

BBC manages, operates and maintains privatized military housing at Tinker Air Force Base (“Base”), including the Plaintiffs’ former residence, pursuant to an overarching suite of contracts executed with the (“USAF”) to address the quality and condition of military housing on three different USAF bases. Plaintiffs allege their Residence was purportedly “uninhabitable and unsafe, due to water leaks, mold and other various poor and/or dangerous and/or filth conditions.” [Doc. 1-2]. Plaintiffs seek damages from BBC on the following causes of action: (a) breach of lease agreement; (b) negligence; (c) negligence per se; (d) fraud; and, (e) nuisance. *Id.*

The basis for BBC’s Motion to Dismiss is that derivative sovereign immunity, also known as the government contractor defense, protects BBC from liability in this case because BBC operated, managed, and maintained the military housing on the Base under validly-awarded contracts with the USAF, BBC adhered to the terms of those contracts, and the United States would be immune from this suit had the claims been brought against it. Additionally, if the Federal Tort Claims Act applies to this case, BBC is still immune from suit because under the terms and conditions of BBC’s authority, there can be no dispute that the conduct complained of was discretionary and was based upon long recognized policy considerations affecting the health and welfare of military personnel.

The Exhibits to BBC’s Motion to Dismiss are designated “Highly Confidential – Attorneys’ Eyes Only” pursuant to the Stipulated Protective Order and BBC now seeks to file these Government contracts under seal, including:

- Exhibit 1, Master Development and Management Agreement, dated July 21, 2008
- Exhibit 2, Property Management Agreement, dated July 21, 2008
- Exhibit 3, Ground Lease, dated July 21, 2008
- Exhibit 4, Project Operating Agreement, dated July 21, 2008
- Exhibit 5, Environmental Management Plan, dated July 21, 2008

Under paragraph 3.c. of the Stipulated Protective Order, “[t]he designation of a document as Confidential Information is a certification by an attorney or a party appearing *pro se* that the document contains Confidential Information as defined in this Order.” *See*, Doc. No. 12. Exhibits 1 through 5 are so designated because they are contracts between the federal Government (“Government”), AMC West Housing LP (“AMC West”) and BBC for the operation, maintenance and management of military housing that contain confidential information related to the Government’s proprietary business operations and further disclose how these businesses are structured and run, how they are financed, and how AMC West/BBC are to execute these government contracts. *See Doe v. Camp Pendleton*, 2020 U.S. Dist. LEXIS 67104 \*, at fn. 1 (S.D.Cal. Apr. 16, 2020)(granting motion to seal in a military housing matter involving similar types of claims and allegations and similar documents including (1) an Amended and Restated Limited Liability Operating Agreement of San Diego Family Housing, LLC, (2) a Third Amended and Restated Real Estate Ground Lease between the United States of America, Department of the Navy and San Diego Family Housing, LLC, (3) a Fourth Amended and Restated Property Management Agreement between San Diego Family Housing, LLC and Lincoln Military Property Management LP; and (4) a Water Intrusion/Mold Operations and Maintenance Management System).

Whether to seal or otherwise withhold judicial records and other case-related information from the public is a matter left to the sound discretion of the district court. *See, Mann v. Boatwright*, 477 F.3d 1140, 1149 (10<sup>th</sup> Cir. 2007). Importantly, the common-law right of access to judicial records is not absolute. *Id.* Instead, “a court, in its discretion, may seal documents ‘if the public’s right of access is outweighed by competing interests.’” *United States v. Hickey*, 767 F.2d 705, 708 (10th Cir. 1985) *citing In re Knight Publishing Co.*, 743 F.2d 231, 235 (4th Cir. 1984). Here, just as in *Camp Pendleton*, the public’s right of access is outweighed by the interest in protecting the detail and nature of the business operations surrounding military housing on an USAF base.

Indeed, this case involves exactly the same type of agreements that were at issue in *Camp Pendleton* and ordered sealed by the Court, i.e. agreements between the Government and a private company for the operation, maintenance and management of military housing. It is beyond dispute that there is a significant countervailing interest in the Government’s proprietary business operations that are the subject of the agreements. The agreements and documents sought to be filed under seal detail how the government has structured and runs its business, how it is financed, and how AMC West/BBC executes these government contracts. The Government’s, and AMC West and BBC’s, interests in maintaining the confidentiality of its business, heavily outweighs the presumption of public access to these records. Furthermore, like the documents in *Camp Pendleton* these documents deal with the operation, management and maintenance of military housing on military bases and not housing or other services provided to the general public.

Defendant BBC AF Management/Development LLC, therefore, respectfully requests that the Court grant it leave to file Exhibits 1 through 5 to its Motion to Dismiss under seal and for any further relief that is just and proper.

Respectfully submitted,

/s/ W. Brett Willis

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 26th day of April, 2021 I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

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*s/ W. Brett Willis*  
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